

**BEFORE THE
PHYSICIAN ASSISTANT COMMITTEE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)

JOHN HARVEY CATES, P.A.)

MBC File # 1E-2004-156081

Physician Assistant)

License No. PA-10552)

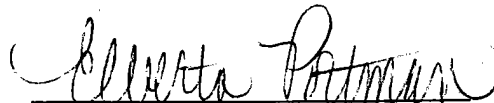
Respondent.)

**ORDER CORRECTING CLERICAL ERROR IN
"LICENSEE NAME" PORTION OF DECISION**

On its own motion, the Physician Assistant Committee (hereafter "Committee") finds that there is a clerical error in the "licensee name" portion of the Decision in the above-entitled matter and that such clerical error should be corrected so that the licensee name will conform to the Committee's issued license.

IT IS HEREBY ORDERED that the licensee name contained on the "Decision and Order" page of the Stipulated Settlement and Disciplinary Order in the above-entitled matter be and hereby is amended and corrected nunc pro tunc as of the date of entry of the decision to read as "JOHN HARVEY CATES, P.A."

June 13, 2007



Elberta Portman, Executive Officer
Physician Assistant Committee
Medical Board of California

**BEFORE THE
PHYSICIAN ASSISTANT COMMITTEE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)
Against:)

JOPHN HARVEY CATES, P.A.)

File No: 1E-2004-156081

Physician Assistant)
License No. PA 10552)

Respondent.)

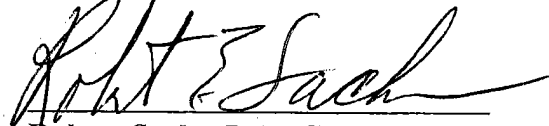
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision and Order by the Physician Assistant Committee of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 11, 2007.

IT IS SO ORDERED June 11, 2007

PHYSICIAN ASSISTANT COMMITTEE



Robert Sachs, P.A., Chairman

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GAIL HEPPELL
Supervising Deputy Attorney General
3 STEPHEN M. BOREMAN, State Bar No. 161498
Deputy Attorney General
4 California Department of Justice
1300 I Street, Suite 125
5 P.O. Box 944255
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6 Telephone: (916) 445-8383
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7

8 Attorneys for Complainant

9 **BEFORE THE**
PHYSICIAN ASSISTANT COMMITTEE
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 JOHN HARVEY CATES, P.A.
2330 Truxton Avenue, Suite A
14 Bakersfield, CA 93301

15 Physician's Assistant No. PA-10552

16 Respondent.
17

Case No. 1E-2004-156081

OAH No.

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:
20

21 PARTIES

22 1. Elberta Portman (Complainant) is the Executive Officer of the Physician
23 Assistant Committee. She brought this action solely in her official capacity and is represented in
24 this matter by Edmund G. Brown Jr., Attorney General of the State of California, and Stephen M.
25 Boreman, Deputy Attorney General.

26 2. John Harvey Cates, P.A. (Respondent) is representing himself in this
27 proceeding and has chosen not to exercise his right to be represented by counsel.

28 3. On or about June 8, 1979, the Physician Assistant Committee issued

1 Physician's Assistant license No. PA-10552 to John Harvey Cates, P.A. (Respondent). . The
2 Physician Assistant license was in full force and effect at all times relevant to the charges brought
3 in Accusation No. 1E-2004-156081 and will expire on August 31, 2006, unless renewed.

4 JURISDICTION

5 4. Accusation No. 1E-2004-156081 was filed before the Physician Assistant
6 Committee (Committee) for the Medical Board of California, Department of Consumer Affairs,
7 and is currently pending against Respondent. A true and correct copy of the Accusation and all
8 other statutorily required documents were properly served on Respondent on February 27, 2007.
9 Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct
10 copy of Accusation No. 1E-2004-156081 is attached as exhibit A and incorporated herein by
11 reference as if fully set forth herein.

12 ADVISEMENT AND WAIVERS

13 5. Respondent has carefully read, and understands the charges and allegations
14 in Accusation No. 1E-2004-156081. Respondent has also carefully read, and fully understands
15 the effects of this Stipulated Settlement and Disciplinary Order.

16 6. Respondent is fully aware of his legal rights in this matter, including the
17 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
18 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
19 the right to present evidence and to testify on his own behalf; the right to the issuance of
20 subpoenas to compel the attendance of witnesses and the production of documents; the right to
21 reconsideration and court review of an adverse decision; and all other rights accorded by the
22 California Administrative Procedure Act and other applicable laws.

23 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
24 each and every right set forth above.

25 CULPABILITY

26 8. Respondent admits the truth of the charges and allegations in Accusation
27 No. 1E-2004-156081.

28 9. Respondent agrees that his Physician's Assistant is subject to discipline

1 and he agrees to be bound by the Committee's imposition of discipline as set forth in the
2 Disciplinary Order below.

3 CIRCUMSTANCES IN MITIGATION

4 10. Respondent John Harvey Cates, P.A. has been fully cooperative in this
5 matter. He is admitting responsibility at an early stage in the proceedings, and the conduct
6 charged pertains to issues of the degree of physician supervision only.

7 CONTINGENCY

8 11. This stipulation shall be subject to approval by the Physician Assistant
9 Committee. Respondent understands and agrees that counsel for Complainant and the staff of
10 the Physician Assistant Committee may communicate directly with the Committee regarding this
11 stipulation and settlement, without notice to or participation by Respondent. By signing the
12 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
13 to rescind the stipulation prior to the time the Committee considers and acts upon it. If the
14 Committee fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and
15 Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be
16 inadmissible in any legal action between the parties, and the Committee shall not be disqualified
17 from further action by having considered this matter.

18 OTHER MATTERS

19 12. The parties understand and agree that facsimile copies of this Stipulated
20 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
21 force and effect as the originals.

22 DISCIPLINARY ORDER

23 In consideration of the foregoing admissions and stipulations, the parties agree
24 that the Committee may, without further notice or opportunity to be heard by respondent, issue
25 and enter the following Disciplinary Order:

26 ///

27 ///

28 ///

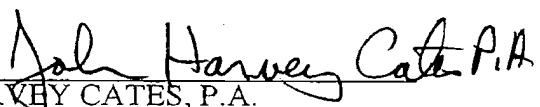
1 IT IS HEREBY ORDERED that Physician's Assistant License No. PA-10552
2 issued to Respondent John Harvey Cates, P.A. is subject to discipline as described herein below.

3 Based on the foregoing admissions, respondent is hereby publically reprimanded.

4 ACCEPTANCE

5 I have carefully read the Stipulated Settlement and Disciplinary Order. I
6 understand the stipulation and the effect it will have on my Physician's Assistant license. I enter
7 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,
8 and agree to be bound by the Decision and Order of the Physician Assistant Committee, Medical
9 Board of California.

10 DATED: 4/23/07

11
12 
13 JOHN HARVEY CATES, P.A.
14 Respondent

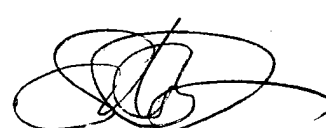
14 ENDORSEMENT

15 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
16 submitted for consideration by the Physician Assistant Committee, Medical Board of California
17 of the Department of Consumer Affairs.

18 DATED: April 23, 2007

19
20 EDMUND G. BROWN JR., Attorney General
of the State of California

21 GAIL HEPPELL
22 Supervising Deputy Attorney General

23
24 
25 STEPHEN M. BOREMAN
Deputy Attorney General

26 Attorneys for Complainant

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Exhibit A
Accusation No. 1E-2004-156081

BILL LOCKYER, Attorney General
of the State of California
GAIL M. HEPPELL
Supervising Deputy Attorney General
STEPHEN M. BOREMAN, State Bar No. 161498
Deputy Attorney General Department of Justice
Office of the Attorney General
1300 I Street
P.O. Box 944255
Sacramento, California 94244-2550

BEFORE THE
PHYSICIAN ASSISTANT COMMITTEE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 1E-2004-156081

JOHN HARVEY CATES, P.A.
2330 Truxton Avenue, Suite A
Bakersfield, CA 93301

ACCUSATION

Physician's Assistant No. PA-10552

Respondent

Complainant alleges:

PARTIES

1. Elberta Portman (Complainant) brings this Accusation solely in his official capacity as the Interim Executive Officer of the Physician Assistant Committee, Department of Consumer Affairs.

2. On or about June 8, 1979, the Physician Assistant Committee issued Physician's Assistant Number PA-10552 to John Harvey Cates, P.A. (Respondent). The Physician's Assistant was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2008, unless renewed.

JURISDICTION

3. This Accusation is brought before the Physician Assistant Committee (Committee) for the Medical Board of California, Department of Consumer Affairs, under the

1 authority of the following laws. All section references are to the Business and Professions Code
2 unless otherwise indicated.

3 4. Section 2227 of the Code provides that a licensee who is found guilty
4 under the Medical Practice Act may have his or her license revoked, suspended for a period not
5 to exceed one year, placed on probation and required to pay the costs of probation monitoring, or
6 such other action taken in relation to discipline as the Division deems proper.

7 5. Section 125.3 of the Code provides, in pertinent part, that the Division
8 may request the administrative law judge to direct a licensee found to have committed a
9 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
10 investigation and enforcement of the case.

11 FIRST CAUSE FOR DISCIPLINE
(Unprofessional Conduct)
[Bus. & Prof. Code Section 2234]

12
13 6. Respondent is subject to disciplinary action under section 2234 of the
14 Code in that respondent is guilty of unprofessional conduct in that he exceeded the scope of his
15 statutorily authorized practice in his treatment of patient M.F.¹

16 The circumstances are as follows:

17 A. On or about April 2, 2002, M.F., a then thirty-eight year old
18 female, presented to respondent at Valley Pain & Wellness Medical Center in Bakersfield
19 California, a medical services business operated independently by respondent. M.F.
20 advised respondent that she was suffering from upper back and neck pain. Respondent
21 noted that the patient had two active trigger points in her left levator scapula muscle,
22 which referred pain to her neck. The patient also had a limitation of range of motion of
23 her cervical spine, to the left, of about 50 degrees, which respondent also recorded.
24 Respondent diagnosed M.F. as having active trigger point pathology and treated her with
25 trigger point injections. At that time, respondent was treating M.F. under the general

26
27 1. The patient's name is abbreviated herein to protect patient confidentiality. The patient's
28 full name and relevant medical records will be provided upon receipt of a timely and properly
executed Request for Discovery.

1 supervision of Dr. Raymond Helston. Dr. Helston, however, had no prior training in
2 giving trigger point injections, and his only knowledge of trigger point injections came
3 from literature and respondent Cates himself. Respondent therefore treated the patient
4 with trigger point injections without the supervision of a treating physician. The patient
5 tolerated the treatment well, had improved range of neck motion to 90 degrees, and
6 reported significant pain reduction. M.F. was given a follow-up appointment for nine
7 days subsequent. She was again seen by respondent on or about April 11, 2002. The
8 patient reported some improvement, but continued upper thoracic pain. Respondent
9 recorded residual trigger point pathology in the left levator muscle and again treated M.F.
10 with trigger point injections. Several minutes later, M.F. complained of a pressure sort of
11 sensation in the left epigastric region as well as in the mid sternal area, according to
12 respondent's record for the patient. Respondent examined the patient's respiratory,
13 cardiovascular and abdominal areas and/or functions and found all within normal limits.
14 Respondent noted, however, that the patient's condition improved when he applied
15 pressure under the left diaphragm. He also noted that the patient improved when seated
16 and leaning backwards. Respondent concluded that the patient's symptoms were
17 probably due to spasm of the diaphragm. M.F. left respondent's office, advising that she
18 would be flying the next day to Pittsburgh in her job capacity as a flight attendant.
19 Respondent requested that she contact him before that time. M.F. contacted respondent
20 from a layover in Chicago and advised she was still experiencing discomfort.

21 B. Upon her return, on or about April 16, 2002, M.F. again presented
22 to respondent, complaining of consistent pain in the left costal margin and an inability to
23 take deep breaths. Respondent's examination of the patient revealed diminished breath
24 sounds on the left lung field. At this time, respondent suspected a pneumothorax and
25 ordered an immediate x-ray. The radiologist, Dr. Williams at Tuxton Radiology, initially
26 reported a small left pleural effusion but no acute pathology. Respondent informed the
27 patient of this result and indicated he would call again after speaking with the radiologist.
28 Dr. Williams contacted respondent a short time later to advise that the x-ray actually

1 showed a pneumothorax on the left of about 30%. At that point, respondent informed
2 M.F. of the x-ray results; however, she had already consulted a pulmonary specialist who
3 advised that she needed a procedure to re-inflate her left lung. M.F. was treated thereafter
4 by her pulmonary specialist on an outpatient basis and did not return to respondent for
5 further care.

6 C. Respondent is subject to discipline for unprofessional conduct
7 within the meaning of section 2234 of the Code, in that his use of trigger point injections
8 to treat patient M.F. without the supervision of a physician and surgeon trained and
9 experienced in the use of trigger point injections, exceeded the scope of his authority as a
10 licensed Physician Assistant as described in Code section 3502.

11 SECOND CAUSE FOR DISCIPLINE
12 (Gross Negligence)
13 [Bus. & Prof. Code Section 2234 (b)]

14 7. Complainant re-alleges paragraph 5, above, and incorporates it by
15 reference herein as if fully set forth at this point.

16 8. Respondent is subject to discipline within the meaning of section 2234 (b)
17 of the Code in that his administration of trigger point injections to patient M.F. without the
18 supervision of a physician and surgeon appropriately trained and knowledgeable in the use of
19 such trigger point injections constitutes gross negligence.

20 DISCIPLINE CONSIDERATIONS

21 9. To determine the degree of discipline, if any, to be imposed on
22 Respondent, Complainant alleges that on or about November 14, 1994, an Accusation was filed
23 against respondent, John Harvey Cates, P.A., in Case No. 1E-93-32049, and on November 1,
24 1995, pursuant to a stipulation a Decision became effective placing John Harvey Cates, P.A. on
25 four years probation with terms and conditions. Thereafter, following respondent's failure to
26 adhere to his terms and conditions of probation, on or about June 4, 1998, a Decision became
27 effective in a disciplinary action entitled In the Matter of the Accusation and Petition to Revoke
28 Probation Against John Harvey Cates, P.A., filed in Case No. D1-93-32049 before the Physician
Assistant Committee on or about August 15, 1997, which extended respondent's probation by

1 four years with terms and conditions. That decision is now final and is incorporated by reference
2 as if fully set forth.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the Physician Assistant Committee issue a decision:

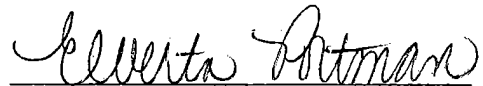
6 1. Revoking or suspending Physician's Assistant Number PA-10552, issued
7 to John Harvey Cates, P.A.;

8 Revoking, suspending or denying approval of John Harvey Cates, P.A.'s authority
9 to supervise physician's assistants, pursuant to section 3527 of the Code;

10 2. Ordering John Harvey Cates, P.A. to pay the Physician Assistant
11 Committee the reasonable costs of the investigation and enforcement of this case, and, if placed
12 on probation, the costs of probation monitoring;

13 3. Taking such other and further action as deemed necessary and proper.

14
15 DATED: February 27, 2007

16
17 

18 Elberta Portman, Interim Executive Officer
19 Physician Assistant Committee
20 Department of Consumer Affairs
21 State of California
22 Complainant

23 03578160-SA2006300030
24 Accusation 2. .wpd
25 smb/accusation/2/14/07
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